

*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 16772 of 2005

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% 05-09-2005

Pappu Venkata Rao, Petitioner

Vs.

\$ Commissioner of Endowments, Boggulakunta, Hyderabad.

And two others

Respondent

! N.Gurugopal

^ Counsel for respondents 1 and 3 : Advocate General

Counsel for respondent No.2 : Sri D. Prakash Reddy

< Gist:

>Head Note

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) AIR 2002 SC 2513

²) (2003)4 SCC 712

³) AIR 1961 AP 250

⁴) AIR 1936 PRIVY COUNCIL 253

⁵) AIR 1969 SC 267

⁶) AIR 1969 SC 634

⁷) AIR 1966 SC 1942

⁸) AIR 1987 SC 2111

⁹) AIR 1981 SC 1473

¹⁰) (2001) 7 SCC 231

¹¹) AIR 1977 SC 237

¹²AIR 1993 SC 1321

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 16772 of 2005

Between:

Pappu Venkata Rao, s/o Krishna Murthy,
Ethamukkala Village, Kothapatnam Mandal, Prakasam District.

..... PETITIONER

AND

1 Commissioner of Endowments, Boggulakunta, Hyderabad.

2 J.S.V.Prasad,
Boggulakunta, Hyderabad.

3 The Government of A.P., rep., by its Principal Secretary Revenue (Ednowments)
Department, Secretariat, Hyderabad.

THE HON'BLE SRI JUSTIC RAMESH RANGANATHAN

WRIT PETITION No.16772 of 2005

JUDGMENT:

The petitioner, a Junior Assistant, working as Manager of Kothapatnam Group Temples, Prakasam District, (prior to his suspension), seeks issuance of a Writ of Quo Warranto that the 2nd respondent is not competent to hold office of "Commissioner of Endowments" in view of the proviso to Section 4(1) of the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as 'the Act'). A declaration is also sought that the Commissioner of Endowments, 1st respondent, does not have the power to suspend the petitioner or to frame charges against him. Consequential directions are sought

to set aside the order dated 20-7-2005 whereby the 1st respondent, while framing seven charges and directing that he be placed under suspension, called upon the petitioner to submit his explanation to the charges framed against him.

Facts, to the extent necessary for this writ petition, are that the petitioner, a temple employee, originally appointed as Junior Assistant in Inkollu Group of Temples of Prakasam District on 11-2-1985, was transferred to Chadalawada Group Temples of Prakasam District in the year 1998. While the petitioner was working as Junior Assistant at Chadalawada group temples, the 1st respondent utilized his services and, in exercise of the powers under Section 29(5) of the Act, authorized the petitioner, vide proceedings dated 30.08.2001, to act as the person in management of Kothapatnam Group temples. It is stated that subsequently some institutions were added and some deleted from Kothapatnam group temples, though the petitioner was working as the person in management, (nomenclature of which was subsequently changed as Manager), he was continued in the substantive post held by him i.e, Junior Assistant. It is further stated that, in the order of authorization, it was specified that the petitioner's services, as person incharge, would not entitle him to make any claim for any purpose and that he would be treated as junior assistant only. Petitioner contends that his posting as person incharge/manager is akin to that of deputation.

Sri N.Gurugopal, learned counsel for the petitioner, contends that the 2nd respondent does not possess the qualifications prescribed for being appointed as the Commissioner of Endowments as he has not completed 45 year of age, as prescribed in the proviso to Section 4(1) of the Act, and his appointment, as such, is without authority of law, *ab initio* void, and is liable to be set aside. It is contended that since the very appointment of the 2nd respondent is void the impugned order dated 20-7-2005, passed by him, whereby the petitioner was placed under suspension and charges framed against him, is also a nullity. Learned counsel would submit that since the petitioner is a servant attached to a religious institution, the competent authority to place him under suspension, initiate disciplinary proceedings and impose punishment is either the trustee or the executive officer under Section 37 of the Act and it is only when such a power is not exercised, that the 1st respondent is empowered, under Section 38 of the Act, to direct the Trustee or the Executive Officer to take action, failing which alone the 1st respondent, after

following the prescribed procedure, is empowered to impose penalty, that too by an order in writing, and as such the impugned order dated 20-7-2005, issued by the 2nd respondent, is without jurisdiction.

This Court, by order dated 1-8-2005, directed the petitioner to take out notice on Respondents 1 to 3. Pursuant thereto, the learned Advocate General appeared on behalf of respondents 1 and 3 and Sri D.Prakash Reddy, learned Senior Counsel, on behalf of the 2nd respondent.

Since facts are not in dispute, in the present case, learned counsel for the petitioner, the learned Advocate General and Sri D.Prakash Reddy, learned Senior Counsel were heard and the writ petition is disposed of at the stage of admission.

Learned Advocate General placed before this court a copy of the order of the Government, in G.O.Rt.No.3661 General Administration (Spl.A) Department dated 31-5-2005, whereby the 2nd respondent, the Special Secretary to Government, Revenue Department, was directed to hold full additional charge of the office of Commissioner of Endowments until further orders and Sri I.Venkateswarlu, the earlier Commissioner of Endowments, was directed to hand over charge of the post of Commissioner of Endowments to the 2nd respondent on 31-5-2005.

It is admitted, both by the learned Advocate General and Sri D.Prakash Reddy, learned Senior Counsel, that the 2nd respondent is less than 45 years of age even as on date. The petitioner would contend that the 2nd respondent is not entitled to be appointed as the Commissioner of Endowments in view of the specific prescription, under the proviso to Section 4 of the Act, that a person to be appointed as Commissioner must complete 45 years of age. On the other hand, both the learned Advocate General and Sri D.Prakash Reddy, learned Senior Counsel, would submit that since the 2nd respondent was not appointed to the post of Commissioner of Endowments and was merely asked to hold full additional charge, until further orders, prohibition of the proviso to Section 4(1) would not be applicable. It is therefore necessary to examine the provisions of the Act in this regard.

Section 3 of the Act relates to appointment of Commissioner and under subsection (1) thereof, subject to the provisions of Section 4, the Government shall appoint a Commissioner for the purpose of exercising the powers and performing

the functions conferred on or entrusted to, by or, under the Act. Under Section 3(2) the Commissioner, appointed under sub-section(1), exercising the powers and performing the functions in respect of religious institutions or endowments, shall be a person professing Hindu religion. Sub-section (3) empowers the Government to determine the conditions of service of the Commissioner appointed under sub-section (1) and under sub-section (4) the Commissioner, appointed under sub-section (1), shall be the employee of the Government and his salary, allowances and other remuneration shall be paid in the first instance out of the consolidate Fund of the State and subsequently reimbursed from the Endowments Administration Fund.

Since the power of the Government to appoint the Commissioner, under Section (3)(1) is subject to the provisions of Section 4, it is necessary to refer to Section 4(1) of the Act:

“Section 4:Qualifications for appointment of Commissioner etc:

(1) A person to be appointed as the Commissioner, shall be one -

- a. Who is holding or has held a post of the District Collector or a post not lower in rank than that of a District Collector in any other service in the State; or
- b. Who is holding or has held a post in the Andhra Pradesh State Higher Judicial Service; or
- c. Who has at least ten years practice as an Advocate of the High Court of Andhra Pradesh or of the Supreme Court; or
- d. Who has been holding the post of Additional Commissioner :

Provided that no person shall be eligible for appointment as Commissioner unless he has completed the age of forty-five years”

It is clear from the proviso, to Section 4(1), that to be appointed as the Commissioner, the person concerned should necessarily have completed the age of 45 years. Since it is not in dispute that the 2nd respondent did not complete the age of 45 years, either at the time when he was directed to hold full additional charge, vide G.O.Rt.No.3661 dated 31-5-2005, or even as on date, he is not entitled to be appointed as the Commissioner in view of the proviso to Section 4(1) of the Act.

WRIT OF QUO WARRANTO – ITS SCOPE:

Jurisdiction of the High Court to issue a Writ of Quo Warranto is limited. While issuing such a writ, the Court merely makes an order of declaration and would not consider its impact on the candidates or other factors which may be relevant for issuance of a writ of Certiorari. An information, in the nature of a quo-warranto, lies against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined. Broadly stated quo warranto proceedings affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted, subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue a writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. Before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by the usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. (**Halsbury's Laws of England, 3rd Edition, Vol.II, Page 145**). A writ of Quo Warranto can only be issued when the appointment is contrary to statutory provisions (**The Mor Modern Co-operative Transport Society Ltd., V. Financial Commissioner and Secretary to Government, Haryana: High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat**).

LOCUS STANDI TO SEEK A WRIT OF QUO-QARRANTO

Writ in the nature of a Quo Warranto would lie even at the instance of a

relator, who has no personal interest in the matter. It is open for a private individual to bring to the notice of the court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold the office should not be permitted to hold it. A Division Bench of this Court in **Mocherla Venkataraya Sarma v. Y.Sivarama Prasad** held:

“.....At the outset we must say that we cannot accede to the theory propounded on behalf of the Government that the relator having no personal interest in the matter could not exhibit this information against the chairman and the Vice-Chairman. It is argued on behalf of the Government that the petitioner has no locus standi to seek the jurisdiction of the Court for this purpose.

In our opinion, an information would lie even at the instance of a relator who has no personal interest in the matter. Information in the nature of Quo Warranto could be filed in the case of Municipal Corporations or Local Boards on the relation of private parties. It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold an office should not be permitted to hold it.

In the words of Tindal C.J., which were extracted with approval by Lord Reading in *R.V.Speyer and R.V.Cassel* (1916) 1 KB 595:

“..... this proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a Deputy or servant held at the will and pleasure of others. The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character that is, an office independent in title.”

Therefore it is competent for a voter or a member of any of the local bodies to invoke the jurisdiction of this court for the issue of information in the nature of quo warranto. Consequently the proceedings could be entertained by this Court for the Purpose for which its jurisdiction is invoked.

This leads us to the question whether the jurisdiction of this court should be exercised in a case like this. As pointed out by Tindal C.J. in deciding whether the information should be refused or whether the rule should be granted, the test is whether there has been usurpation of an office; in other words whether there is a legal disability to hold the office by or a legal prohibition against a person occupying a particular place.”

WHETHER A WRIT OF QUO-WARRANTO SHOULD BE ISSUED IN THE PRESENT CASE.

While it is not in dispute that the 2nd respondent has not completed the age of 45 years even as on date and is therefore not entitled to be appointed as Commissioner of Endowments, in view of the statutory prescription under Section 3(1) read with the proviso to Section 4(1) of the Act, both the learned Advocate General and Sri D.Prakash Reddy, learned Senior Counsel, would submit that the 2nd respondent has not been appointed as the Commissioner, under Section 3(1) of the Act, and was merely directed to hold full additional charge, of the said post, until further orders. It is their case that such a power inheres in the Government, under Article 162 of the Constitution of India, to make interim arrangements pending appointment, of a Commissioner, in accordance with the provisions of the Act.

This submission, I am afraid, cannot be accepted. It is only when a person is appointed as a Commissioner under Section 3(1) of Act, is he empowered to discharge the functions and duties of the Commissioner of Endowments, as prescribed in the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987 and the rules made thereunder. Statutory provisions cannot be circumvented or given a go by, in directing a person, not qualified to be appointed as the Commissioner, to hold full additional charge of the said post. It is well settled that when power is given under the Statute to do a certain thing in a certain way, the thing must be done in that way or not at all. (**Nazir Ahmed v. King Emperor, Gujarat Electricity Board v. Girdharlal Motilal, State of Gujarat v. Shantilal Mangaldas**). It is also well settled that Executive/administrative instructions can only supplement and cannot supplant the provisions of either the statute or the statutory rules (**B.N.Nagarajan Vs. State of Mysore**). In view of the prohibition, under the proviso to Section 4(1) of the Act, it is not permissible for the Government, to exercise its executive power under Article 162 of the Constitution of India, to supplant, override or circumvent statutory provisions.

Since it is not in dispute, that the second respondent does not possess the qualifications prescribed under Section 3(1) read with the proviso to Section 4(1) of the Act, a Writ of Quo Warranto shall issue declaring that the 2nd respondent is not competent to hold the office of the Commissioner of Endowments. The orders passed in G.O.Rt.No.3661 dated 31-5-2005, to the extent of directing the 2nd respondent to hold full additional charge of the post of the Commissioner of Endowments, is hereby set aside.

DE-DEFACTO DOCTRINE

The question which remains for consideration is whether on a Writ of Quo Warranto being issued, declaring the 2nd respondent not entitled to continue to hold the office of the Commissioner of Endowments, the impugned order passed by him, earlier on 20-7-2005, would automatically be required to be set aside.

Learned Advocate General, placing reliance on **M/s Beopar Sahayak (P) Ltd v. Vishwa Nath**, would contend that since the 2nd respondent, at the time of passing the impugned order dated 20-7-2005, was holding office under colour of lawful authority, (G.O.Rt.No.3661 dated 31-5-2005), even if his appointment is found later to be defective, whatever may be the defect of his title to the office, acts done by such a person when he was clothed with the power and function of the office, albeit unlawfully, will have the same efficacy as an act done by the same person de jure.

Learned Advocate General would invoke the de facto doctrine to contend that the charge sheet cum suspension order dated 20-7-2005 would still continue to remain valid, even if this court were to set aside the appointment of the 2nd respondent as Commissioner of Endowments. The Apex Court, in **M/s Beopar Sahayak (P) Ltd (8 supra)** relied on its earlier judgment in **Gokaraju Rangaraju v. State of Andhra Pradesh**, wherein it was held thus:

“.....A Judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto Judge may be questioned directly in a proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a Judge to his office. Otherwise so soon as a Judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the Judge is no Judge. A Judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a Judge's appointment in an appeal against his judgment is, of course, such a collateral attack.....”

The de facto doctrine was invoked by the Supreme Court in **B.R.Kapur v. State of Tamil Nadu**. While holding that, in the appointment of the 2nd respondent therein as the Chief Minister, there had been clear infringement of constitutional provisions and that a Writ of Quo Warranto must be issued, the Supreme Court, however, held that all acts otherwise legally and validly performed, from the date of appointment till the date of the order of the Supreme Court, by the 2nd respondent would not be adversely affected.

Learned counsel for the petitioner would submit that while the acts of officials de facto cannot be suffered to be questioned for want of legal authority, except in proceedings initiated directly and not by way of a collateral attack. Since the appointment of the 2nd respondent as Commissioner, is directly under challenge, in this writ petition, the de facto doctrine has no application. Learned counsel places reliance in this regard on the judgment of the Supreme Court in **The State of Haryana v. The Haryana Cooperative Transport Ltd.**, wherein it was held:

“Nevertheless, the award given by Shri Gupta as the Presiding Officer of the Labour Court is defended by the State Government on the plea that Shri Gupta's appointment cannot be challenged in a collateral proceeding filed in the High Court for challenging the award. Reliance is placed in support of this submission on the following passage in Cooley's “A Treatise on the Constitutional Limitations” (8th Edn., Vol.2; pages 1355-1358):

“An officer de jure is one who, possessing the legal qualifications, has been lawfully chosen to the office in question and has fulfilled any conditions precedent to the performance of its duties. By being thus chosen and observing the precedent conditions, such a person becomes of right entitled to the possession and enjoyment of the office, and the public, in whose interest the office is created, is entitled of right to have him perform its duties. If he is excluded from it, the exclusion is both a public offence and a private injury.

An officer de jure may be excluded from his office by either an officer de facto or an intruder. An officer de facto is one who by some color of right is in possession of an office and for the time being performs its duties with public acquiescence, though having no right in fact. His color of right may come from an election or appointment made by some officer or body having colorable but no actual right to make it, or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed, or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence.

No one is under obligation to recognize or respect the acts of an intruder, and for all legal

purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public businesses and insecurity of private rights, the acts of the officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by some one claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or employment, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is suffered to retain the office, as though he were an officer by right and the same legal consequences will flow from them for the protection of the public and of third parties. This is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally.”

It is not doubt true that, in the present case, challenge to the appointment of the 2nd respondent, as Commissioner of Endowments, is not under collateral attack but is directly under challenge and therefore the petitioner is entitled to seek a Writ of Quo Warranto, which writ has been issued by this Court. This, however, does not entitle the petitioner to have the impugned charge sheet cum suspension order, dated 20-7-2005 automatically set aside. While acts of officers de facto, cannot be questioned collaterally, it does not necessarily follow therefrom that in cases, where such acts are directly in challenge, the de facto doctrine has no application. Since the 2nd respondent had issued the impugned order dated 20-7-2005, under colour of lawful authority of the order of the Government in G.O.R.Rt.No.3661 dated 31-5-2005, it cannot be said that the de facto doctrine has no application nor can it be said that merely because his appointment has now been set aside by this Court, all acts done by him, when he held the office under colour of lawful authority, is required to be declared null and void. If the acts of the 2nd respondent, while holding office of the Commissioner of Endowments, has otherwise been validly and legally performed, the defacto doctrine would apply, and such acts would not be adversely affected.

POWER OF THE COMMISSIONER TO PASS THE ORDER OF SUSPENSION:

Whether the Commissioner had the power, to issue the charge sheet cum suspension order, is a question which can be answered only on an examination of the provisions of the Act and the rules made thereunder. Sections 37 and 38 of the Act read as under:

“Section 37. Punishment of office-holders and servants : -

(1) All office-holders and servants attached to a charitable or religious institution or

endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

(2) Notwithstanding anything in sub-section (1), in the case of an office-holder or servant of an institution or endowment whose annual income exceeds rupees ten lakhs, the power to impose any penalty specified in that sub-section shall, subject to such restrictions and conditions, as may be laid down by the Government, be exercised by the executive officer after following such procedure as may be prescribed.

(3) (a) Any office-holder or servant aggrieved by an order passed under sub-section (1) by the trustee may, within sixty days from the date of receipt of the orders by him, prefer an appeal to the Commissioner, the Deputy Commissioner, or the Assistant Commissioner as the case may be having jurisdiction, from the order of the trustee;

(b) Any office-holder or servant aggrieved by an order passed under sub-section (2) by the Executive Officer, may within sixty days from the date of receipt of the order by him prefer an appeal to the trustee.

(4) (a) Any office- holder or servant may, within sixty days from the date of receipt by him of the order passed in an appeal filed under clause (a) of sub-section (3), prefer a second appeal if such order is made by-

(i) the Commissioner, to the Government;

(ii) the Deputy commissioner or the Assistant

Commissioner, to the Commissioner;

(b) Any office-holder or servant aggrieved by an order of the trustee under clause (b) of sub-section (3) may, within sixty days from the date of receipt by him of such order, prefer a second appeal to the Commissioner.

(5) (a) Where it is noticed by the trustee that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the Executive Officer under sub-section (2), for any of the lapses specified in sub-section (1), the trustee may direct the Executive Officer to take action under sub-section (2), failing which the trustee may, after following the prescribed procedure, impose, by an order in writing any of the penalties specified in sub-section (1);

(b) Any office-holder or servant aggrieved by an order, passed by the trustee or by the Executive Officer, in pursuance of the direction given under clause (a) may, within sixty days from the date of receipt of the order by him, prefer an appeal to the Commissioner.

Section 38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish office-holders, etc. in certain cases:-

(1) Where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction, that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be under Section 37 for any of the lapses specified in sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action under Section 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalties specified in sub-section (1) of that section on such office-holder or servant.

(2) Any office-holder or servant aggrieved by an order passed under sub-section (1) may within sixty days from the date of receipt of the order by him, prefer an appeal if such order is passed by -

- (a) the Commissioner, to the Government;
- (b) the Deputy Commissioner, to the Commissioner; and
- c. the Assistant Commissioner, to the Deputy Commissioner; and any order passed in such appeal shall be final."

Sri N.Gurugopal, learned counsel for the petitioner, would submit that, under Section 37 it is only the trustee or the Executive Officer, as the case may be, who are the competent authorities to suspend a temple employee, that Section 38, which empowers the Commissioner to take action, is subject to the restrictions placed therein i.e, in cases where the Trustee/ Executive Officer have failed to take action on their own or after being directed by the Commissioner to do so. Learned counsel would submit that in the present case no action has been taken by the competent authority under Section 37 of the Act nor has the Commissioner directed them to take action against the petitioner, and as such neither Section 37 nor Section 38 apply to the case on hand.

Section 37 confers power on the Trustee and the Executive Officer to impose punishment, which includes suspension as a measure of punishment. In the case on hand, however, the order of suspension is not as a measure of punishment, but is merely an order passed pending enquiry.

In exercise of the powers conferred, by Sections 37 and 38 read with Section

153 of the Act, the “Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Office Holders and Servants Punishment Rules, 1987”, (hereinafter referred to as the ‘Punishment Rules’), were made and notified in G.O.Ms.No.830, Revenue (Endowments-I) dated 18-8-1989. Rule 6 and 7 of the Punishment Rules read as under:

“6(1)An office-holder or servant attached to a charitable or religious institution or endowment maybe ordered to be under suspension from office or service by the trustee, the Executive Officer, the Assistant Commissioner, the Deputy Commissioner or the Regional Joint Commissioner or the Additional Commissioner or the Commissioner, as the case may be pending investigation or enquiry into grave charges where such suspension is necessary in public interest:

Provided that where the investigation has not been completed and the action proposed to be taken in regard to him has not been completed within a period of six months from the date of suspension, the fact shall be reported to the Government, Commissioner, Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be for orders. The period of suspension shall not, however, exceed six months without the previous orders of the Government in the case of suspension ordered by the Commissioner or the Additional Commissioner and of the Commissioner in other cases:

Provided further that during the period of suspension he shall be paid, subsistence allowance in accordance with the rules in Chapter-VIII of the Fundamental Rules and Subsidiary Rules of the Andhra Pradesh Government.

2. An Office-holder or servant attached to a charitable or religious institution or endowment who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention by an order of the Authority competent to impose the suspension and shall retain under suspension until further orders by such authority.

3. Any order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority by which such order was made or deemed to have been made, or by any authority to which the authority is subordinate.

7. Every order imposing the penalty, shall be communicated in writing to the office-holder or servant concerned.”

It is clear, from a reading of Rule 6(1), that the Commissioner has been empowered to place an employee under suspension pending enquiry. Sri N.Gurugopal, learned counsel, would submit that the power conferred on the

Commissioner under Rule 6(1), to place an employee under suspension, can only be exercised where the provisions of Section 38 are attracted. This submission is made only to be rejected as it is well settled that, in the absence of any prohibition, an employer has the inherent right to place an employee under suspension. It is also well settled that in the absence of any prohibition, any person who exercises some degree of control over an employee, even if he is not the appointing authority, is entitled to initiate disciplinary proceedings by issuing a charge sheet (**P.V. Srinivasa Sastry v. Comptroller and Auditor General**). The distinction, between issuance of charge sheet and placing the employee under suspension pending enquiry on the one hand and imposition of punishment on the other, cannot be lost sight of. While punishment has necessarily to be imposed by the authority on whom such power is conferred under the Act or the rules made thereunder, in so far as the power, to place an employee under suspension pending enquiry or to frame charges, is concerned, such power, in the absence of any prohibition, can also be exercised by any other appropriate authority, who can be said to exercise some degree of control over the employee concerned.

Since Rule 6 (1) clearly empowers the Commissioner to place a temple employee under suspension, and inasmuch as the 2nd respondent, on the date on which the impugned order dated 20-7-2005 was issued, was acting under colour of lawful authority, (G.O.Rt.No.3661 dated 31-5-2005), the impugned charge sheet –cum-suspension order dated 20-7-2005 cannot be said to be without jurisdiction. The writ petition, in so far as it relates to issuance of the charge sheet cum suspension order dated 20-7-2005, fails and is hereby dismissed.

The writ petition is partly allowed and the order issued in G.O.Rt.No.3661 dated 31-5-2005, directing the 2nd respondent to hold full additional charge of the Commissioner of Endowments, is hereby set aside. The 2nd respondent shall no longer exercise any of the powers conferred, on the Commissioner of Endowments, under the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987. Necessary action shall be taken by the Government to appoint a person, who fulfills the statutory qualifications prescribed under Sections 3 and 4 of the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987, as the Commissioner of Endowments. No costs.

-9-2005

Note: L.R.copy to be marked.

B/o

Asp/mrkr